

FINANCES

Building Costs and Legal Battles—Reversed?

the changing tariff landscape

By Christopher S. Drewry and Kaylin O. Cook

Last year, we wrote about how tariffs were shaking up the construction industry. At the time, our article, “Building Costs and Legal Battles,” examined the growing costs associated with tariffs on aluminum, steel, and semi-finished copper and copper-intensive derivative products, as well as the possibility of additional tariffs on lumber, timber, and other wood derivative products.

The landscape has since shifted.

On Feb. 20, 2026, in *Learning Resources v. Trump*, the U.S. Supreme Court ruled that tariffs under the International Emergency Economic Powers Act (IEEPA) were unlawful and ordered refunds of overpaid tariffs, although the ruling did not result in automatic refunds for all importers. Following the Supreme Court’s ruling, the U.S. Court of International Trade (CIT) issued several

orders directing U.S. Customs and Border Protection (CBP) to refund certain types of unlawfully collected IEEPA duties. To administer the refunds ordered by the Supreme Court and the CIT, CBP created the Consolidated Administration and Processing of Entries (CAPE) refund system. CAPE was implemented in phases, and significant uncertainty remains regarding processing timelines for different types of shipments, especially for importers who have not filed lawsuits. The U.S. Department of Justice has appealed the CIT orders arguing the CIT improperly extended refund relief to nonlitigant importers. This appeal remains pending before the U.S. Court of Appeals for the Federal Circuit.

After the Supreme Court’s ruling in *Learning Resources* (which only concerned IEEPA tariffs), the Trump administration imposed temporary “back-up” tariffs pursuant

to the Trade Act. On May 7, 2026, the CIT similarly ruled that President Trump’s 10-percent universal global tariff was unlawful and ordered refunds. However, unlike the CIT’s March rulings, the CIT’s May ruling applied only to the specific plaintiffs in that case. As expected, the Department of Justice quickly appealed the May 7 ruling to the U.S. Court of Appeals for the Federal Circuit, which granted a stay of the effect of CIT’s decision during the appellate process.

WHO ACTUALLY GETS MONEY BACK?

Tariff refunds are generally available only to those who directly paid the tariffs and who timely request refunds, which may have required or still require litigation. For construction industry professionals, that means a contractor or other business is most likely eligible for a refund only if (i) it directly imported the goods or, when using a customs broker, directly paid the tariffs to CBP; and (ii) it timely files a claim with the CBP through the CAPE system, which may require litigation.

For many contractors, then, the impact of the refunds may be indirect. Contractors often did not pay the tariffs directly. Instead, the cost of the tariffs was incorporated into the price of the goods and materials they purchased. In other words, while the tariffs may be refunded to the importer, the contractor may have been the party that ultimately bore the increased cost. Moreover, tariffs may have had a significant impact on the industry, especially on cost-plus projects



and on projects with guaranteed maximum prices, causing those price ceilings to be reached sooner than anticipated. In some cases, this affected project profitability and even project viability.

That raises a new legal question: If a contractor ultimately paid the tariff-related increase through higher material costs, is there a contractual basis to recover that cost from a refund received upstream?

The answer will likely depend on the terms of the applicable contract, especially if the price was fixed or cost-plus and whether there was a tariff-specific clause. Contractors should note that, in the absence of a contractual requirement, a supplier or importer likely has no legal obligation to issue refunds due to increased costs for raw materials. However, many contracts specifically contemplate this scenario by allowing for price adjustments, even if the contract does not explicitly refer to tariffs.

Contractors should look for contractual provisions regarding tariffs (if applicable), taxes, changes in law, price adjustments,

and pass-through costs to determine whether the contract provides an explicit mechanism for recovering tariff-related costs. Contractors should also consider potential tax implications associated with tariff refunds, including whether related sales tax refunds may be available.

Government contractors should take an extra step and carefully scrutinize their contracts to determine if requests for equitable adjustments are available and/or pending and if the agreement is a cost-reimbursement contract. With cost-reimbursement contracts, the government could argue, since costs were passed onto it, it is entitled to receive the benefits of the tariff refunds, not the contractor.

In sum, tariff refunds are likely indirect and do not necessarily change underlying contractual or financial realities. Whether a contractor is entitled to receive the benefit of a refund received by an upstream supplier or importer will depend on the specific circumstances and, most importantly, the language of the contract.

Given the potential financial and contractual implications, contractors should consult with legal and tax professionals to determine whether they may be entitled to recover tariff-related costs or share in any resulting refunds. ■

about the authors

Christopher S. Drewry is a partner in the Indianapolis office of the law firm of McCarter & English, LLP (www.mccarter.com), where he focuses his practice on construction law and litigation, labor and employment law and litigation, and commercial litigation. Chris is a current member and Past Chair of the Construction Law and Litigation Committee of the International Association of Defense Counsel, and he can be reached at cdrewry@mccarter.com. Kaylin O. Cook is an associate at McCarter & English, where she focuses her practice on business litigation, including construction law and labor and employment law. She can be reached at kcook@mccarter.com.